8:Howell E, G-5 (1942-1944)1954
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692 this was usually inflicted by the District Commissioner sitting as a
681 magistrate, or by the court on the advice of the District Commissioner, this form of sentence is now imposed almost automatically. Yet although there are clearly some Nuer chiefs who realize the value of imprisonment as a deterrent, the majority would not impose such a sentence without pressure from the administration. Moreover such punishments are often inflicted without due consideration of the circumstances of the case, and it is symptomatic of the general attitude to punishment that court members have a habit of asking for fixed sentences to be laid down for specific offences. It is, indeed, one of the problems of the Administration to explain to the Nuer that, though there may be a maximum penalty for an offence, this need not necessarily be applied. The reason is that, although Nuer chiefs and court members may be aware of the value of punishment, they are still reluctant to inflict it, especially as they are often subjected to recrimination by their fellows after the case is over. A fixed penalty absolves them from this and throws the responsibility on the Government. Nevertheless homicide and hurt must now be classed as criminal offences among the Nuer because they are habitually treated as such, albeit under protest. This observation may be applied also to theft.

•[681] In other offences in which punishment is sometimes but not always applied, we find that it is not usually the offence itself which is treated as a criminal action but the offender's action in disobeying the orders of the local authorities or the court. The punishment is inflicted for the defiance of authority by the offender rather than for the offence he had originally committed.

681 It is also clear that the introduction of penal sanctions has sometimes led to a curious mixture of legal concepts. For example, adultery
684 is, as we have already seen, an offence which is normally compounded by payment of compensation to the wronged husband. Even though offenders are sometimes punished for persistent attention to the wives of others or for flagrant defiance of the orders of their chiefs, adultery remains essentially a private delict. For the reasons already described,[1] if a divorce follows an act of adultery, it is a fundamental principle among the Nuer that the compensation cattle must be returned to the adulterer and should not be retained by the woman's husband, who would otherwise pass them to her family. To do so is to risk a confusion of legal status which Nuer law seeks to avoid. Owing to a recent decision by the Council of Nuer Chiefs, these cattle must now be paid to the Government and thus become a fine. Adultery, initially a private delict, becomes a public delict, and a criminal offence should
671 the husband decide to dissolve the union subsequently. There is
177 therefore growing up a curious admixture of traditional Nuer law, which in basis and principle is essentially private law, and European

[1] See pp. 186-8.